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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL FREDRICK MINKEY, JR.,

Defendant and Appellant.

F070462

(Super. Ct. No. BF150688A)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Eric Bradshaw,
Judge.

Paul Kleven, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and
Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Appellant Michael Fredrick Minkey, Jr., appeals the denial of his motion to suppress evidence obtained during a search of his vehicle. Appellant claims the trial court wrongly found reasonable suspicion existed to conduct the initial traffic stop leading to the search. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

While on patrol, at approximately 11:35 p.m., on September 9, 2013, Bakersfield Police Officer Clifton Ary and his partner, Officer Paez, pulled up behind a black GMC Sierra truck waiting in a turn-out lane to make a left turn. The officers were about one car length behind the truck. As the truck turned left, Officer Ary noticed that “the driver’s side front window was tinted.” Officer Ary explained the window was “darkly covered from the inside” and that “it was dark, dark tint.” Due to the tint, Officer Ary could not see into the vehicle at all, even though the surrounding area was well lit.

Officer Paez then activated the patrol car’s emergency lights to conduct a stop on the vehicle. In response, the driver applied the brakes and came to a stop. Officer Ary noticed the center brake light on top of the truck cab did not illuminate, although the two tail brake lights did.

Appellant was found to be the driver. A subsequent search of the truck, which is not directly challenged on appeal, revealed a backpack containing a substance believed to be methamphetamine and a firearm.

At the suppression hearing, appellant called one of his neighbors as a witness. The neighbor was shown two pictures of appellant’s truck, neither showing heavily tinted windows, before testifying that the pictures depicted the truck as he had known it both before and after the contested stop. Officer Ary was also shown these images. He

¹ Facts concerning the traffic stop are taken from the March 12, 2014 hearing on appellant’s motion to suppress.

testified there was much darker tint on the windows than depicted in the pictures on the night he stopped appellant's truck.

Following this evidence and related argument, the trial court denied appellant's motion to suppress evidence arising from the traffic stop. The court rejected appellant's photographic evidence and credited Officer Ary's testimony, stating "these photographs are not what the officer saw that night. The officer saw tinting, couldn't see through the window. I accept that testimony. Testimony sounded credible."

Appellant subsequently pled nolo contendere to one count of possession for sale (Health & Saf. Code, § 11378) with an enhancement for being armed with a firearm (Pen. Code, § 12022, subd. (a)(1)), and one count of possession of a firearm by a convicted felon (Pen. Code, § 29800, subd. (a)(1)), and was sentenced accordingly. This appeal timely followed.

DISCUSSION

Appellant contends the People failed to present objective, factual evidence sufficient to support the conclusion appellant was stopped because he was engaged in criminal activity. Specifically, appellant argues Officer Ary's testimony that he saw dark tinted windows that blocked his view of the driver was insufficient to demonstrate those windows were illegally, as opposed to legally, tinted. Assuming the initial justification for the stop was improper, appellant further argues that his nonilluminated center brake light cannot justify the traffic stop because it was only discovered after appellant had ceded to a show of authority by the police.

Standard of Review and Applicable Law

Our standard of review for a motion to suppress is governed by well-established principles. (*People v. Ormonde* (2006) 143 Cal.App.4th 282, 290.) "As the finder of fact in a proceeding to suppress evidence (Pen. Code, § 1538.5), the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search

is constitutionally unreasonable.” (*People v. Woods* (1999) 21 Cal.4th 668, 673.) “We review the court’s resolution of the factual inquiry under the deferential substantial-evidence standard.” (*People v. Saunders* (2006) 38 Cal.4th 1129, 1134.) We then independently apply the requisite legal standard to the facts presented. (*People v. Celis* (2004) 33 Cal.4th 667, 679.)

“A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.) “Ordinary traffic stops are treated as investigatory detentions for which the officer must be able to articulate specific facts justifying the suspicion that a crime is being committed.” (*In re Raymond C.* (2008) 45 Cal.4th 303, 307.)

“A traffic stop is lawful at its inception if it is based on a reasonable suspicion that *any* traffic violation has occurred, even if it is ultimately determined that no violation did occur. [Citations.] The officer’s duty is to resolve—through investigation—any ambiguity presented as to whether the activity observed is, in fact, legal or illegal.” (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510.)

Articulable Facts Support a Reasonable Suspicion of Criminal Activity

Although appellant noted conflicts between Officer Ary’s testimony and evidence produced by the defense at the suppression hearing regarding the level of tint on appellant’s windows, appellant does not directly challenge the testimony. Rather, appellant argues the facts presented are insufficient to support a finding that Officer Ary possessed the necessary reasonable suspicion of criminal activity to stop appellant as a matter of law.

In this case, the People concede that tinted windows are not necessarily unlawful. However, tinting which “obstructs or reduces the driver’s clear view through the windshield or side windows” may be illegal. (Veh. Code, § 26708, subd. (a)(2); *People*

v. Niebauer (1989) 214 Cal.App.3d 1278, 1292 [“If an officer forms an opinion in a common sense examination of a vehicle that there is a film placed upon the vehicle’s windows in an unauthorized place or that light is obstructed in the fashion contemplated by the statute, such evidence will be sufficient to support conviction”].)

Appellant contends this case is controlled by the analysis in *People v. Butler* (1988) 202 Cal.App.3d 602 (*Butler*). We disagree. *Butler* stands for the straightforward position that merely observing tinted windows does not justify further inquiry by the police. (*Id.* at pp. 606-607.) In finding the contested stop in *Butler* was illegal, the court noted the officer had only seen the defendant’s car “from a distance at night as he drove by the Highway Liquor Store and again as the car sped past him” before further noting the officer “‘didn’t like the idea of the tinted windows.’” (*Id.* at p. 606.) The facts of this case are different.

In this case, although lacking evidence of Officer Ary’s experience with identifying illegal window tinting, the record contains descriptions of the tint and the circumstances surrounding Officer Ary’s ability to view the tint, which demonstrate an objective basis upon which Officer Ary could reasonably suspect criminal activity. According to testimony found credible by the trial court,² Officer Ary was within a car length of appellant’s truck when he noticed “dark, dark tint” covering the driver’s side front window “from the inside.” The tint was dark enough that Officer Ary could not see into the truck at all, even though the surrounding area was well lit. This evidence, above and beyond the mere fact appellant’s windows were tinted, is sufficient to form an objectively reasonable belief that the tinting observed was a Vehicle Code violation. (See

² As previously noted, although appellant points to conflicting evidence regarding the level of tint on the truck, he does not attack the credibility finding made by the trial court. Even if a direct challenge had been made, “the testimony of a witness is ordinarily sufficient to uphold a judgment ‘even if it is contradicted by other evidence, inconsistent or false as to other portions.’” (*People v. White* (2014) 230 Cal.App.4th 305, 319, fn. 14.)

United States v. Wallace (9th Cir. 2000) 213 F.3d 1216, 1220 [“heavy tint” that made it difficult to look into the vehicle was sufficient, standing alone, to establish probable cause to suspect a tinting violation]; *People v. Hanes* (1997) 60 Cal.App.4th Supp. 6, 9-10 [seeing tint so dark “as to appear black and prevent the officer from seeing the occupants of the front seats” as car passed “relatively slowly and directly in front of the officer at a lighted intersection” supported reasonable suspicion for detention].)

Given the facts recounted by Officer Ary and accepted by the trial court, we conclude the stop was reasonable. As such, we do not reach whether the later observation that appellant’s center brake light was malfunctioning constitutes an independent basis for the stop.

DISPOSITION

The denial of the motion to suppress is affirmed.